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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/241,508 02/01/99 EVANS

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EXAMINER

BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

02/13/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/241,508

Applicant(s)  
Evans et al

Examiner  
Drew Becker

Group Art Unit  
1761

☒ Responsive to communication(s) filed on Jan 4, 2001

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-59 is/are pending in the application.

Of the above, claim(s) 58 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-57 and 59 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## DETAILED ACTION

### *Election/Restriction*

1. This application contains claim 58 drawn to an invention nonelected without traverse in Paper No. 4. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-40 and 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 1, line 2 recites "a characteristic thickness". It is not clear what would constitute a "characteristic thickness".
5. Claim 1, line 5 recites "a convex dough forming region with a depth greater than the thickness of the dough sheet". It is not clear what dimension of the cutter is considered the "depth". It is not clear whether the "characteristic thickness" is the same dimension as the "thickness of the dough sheet". Further, the thickness of the dough will vary depending upon the user's preferences, the type of dough, or the final product desired to name but a few.

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6. Claim 59, line 5 recites "forming it". It is not clear what "it" is.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 53 remains rejected under 35 U.S.C. 102(b) as being anticipated by Makowecki [Pat. No. 5,687,638].

Makowecki teaches a method of cutting dough by use of a rotary drum with plural cells

(Figure 3, #30 & 38), an outer cutting edge with an inner convex blunt portion (Figure 5, #39 & 41), and forming the top surface of the dough into a convex shape (Figure 2 & 5, #32).

Although not specifically mentioned, the blunt dough cutting method of Makowecki would inherently pull and stretch of the dough surface since this is a necessity which is met when nearly any material is cut.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 5-7, 11-23, 25, 41, 48-52, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2195892A.

FR 2195892A teach a method and apparatus for cutting dough by conveying the dough (Figure 4, 2), engaging the dough with a rotatable convex blunt surface to form a depression (Figure 4, 5b), a deeper depression formed by a second rotatable convex blunt surface (Figure 4, 5c), then severing the dough in the depression at a third location along the conveyor with a third rotatable convex blunt surface (Figure 4, 5d), the rotatable convex blunt surfaces being of decreasing width (Figure 3, 5b-c), and the rotatable convex blunt surfaces having different thicknesses near their radial edges forming a rounded shoulder (Figure 3). Although not specifically mentioned, the convex blunt dough cutting method of FR 2195892A would inherently pull and stretch of the dough surface since this is a necessity which is met when nearly any material is cut. It would have been obvious to one of ordinary skill in the art to vary the dimensions of the rotatable convex blunt surfaces of FR 2195892A since FR 2195892A teaches different thickness and diameters (Figure 3, 5b-d; Figure 5; 7a-c) and since this type of optimization would have been done during the course of normal experimentation. Regarding claim 23, it would have been obvious to one of ordinary skill in the art to raise one of the inner cutters (Figure 5, 7c) and thereby impress a pattern with the rotatable blunt surface of the first two rotatable blunt surfaces (Figure 5, 7a-b) since the pressing of a pattern into a dough was

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commonly known, as evidenced by EP 841009A2 (Figure 6, 31). Regarding claims 41 and 52, it would have been obvious to one of ordinary skill in the art that the invention of FR 2195892A would also produce convex shapes since this effect is dependent upon the physical properties of the material which is cut such as the elasticity, density, and viscosity of the dough to name just a few. Regarding claims 1 and 59, the shape of the cut material would be a preferred method of using the claimed device, dependent upon the material to be cut (as previously discussed), and as such is not given weight. Phrases such as “for forming and cutting a dough sheet... and a second surface with a second skin” in claim 1 and “while forming it into a convex shape using the convex blunt dough engaging portion” in claim 59 are merely preferred methods of use of the claimed apparatus and as such are not given weight.

11. Claims 1-4 remain rejected under 35 U.S.C. 103(a) as being unpatentable over D’Orlando [Pat. No. 4,808,104].

D’Orlando teaches a method for cutting dough with a cutter having a blunt dough engaging portion with a cutting edge (Figure 2, 14; column 3, line 11), a convex region (Figure 1, 17), and a corner (Figure 2, 13). Regarding claim 1, the shape of the cut material would be a preferred method of using the claimed device, dependent upon the material to be cut (as previously discussed), and as such is not given weight. It would have been obvious to one of ordinary skill in the art to vary the dimensions of the blunt dough engaging surface of D’Orlando since dough products were commonly made of different thicknesses and sizes; and since this type of optimization would have been done during the course of normal experimentation.

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12. Claims 54-57 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Makowecki.

Makowecki teaches a method of cutting dough by use of a rotary drum with plural cells (Figure 3, #30 & 38) and an outer cutting edge with an inner blunt portion (Figure 5, #39 & 41). It would have been obvious to one of ordinary skill in the art to vary the dimensions of the blunt dough engaging surface of Makowecki since dough products were commonly made of different thicknesses and sizes; and since this type of optimization would have been done during the course of normal experimentation.

13. Claims 8, 26, and 42 remain rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2195892A as applied above, in view of Makowecki.

FR 2195892A teach the above mentioned concepts. FR 2195892A do not teach a rotatable drum with plural cutting cells. Makowecki teaches a method of cutting dough by use of a rotary drum with plural cells (Figure 3, #30 & 38). It would have been obvious to one of ordinary skill in the art to incorporate the drum and cells of Makowecki into the invention of FR 2195892A since both are directed to methods of cutting dough, since FR 2195892A teach rotary cutters which cut a pattern into the dough (Figure 2, #5b-d & 7a-c), and since rotary drum with cells of Makowecki would eliminate the need for multiple cutters as used by FR 2195892A thus eliminating the need to synchronize multiple cutters.

14. Claims 9-10, 27-28, 44, and 46 remain rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2195892A as applied above, in view of Simelunas [Pat. No. 4,534,726].

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FR 2195892A teach the above mentioned concepts. FR 2195892A do not teach a walking head which is reciprocally mounted. Simelunas teaches a method of cutting dough by use of a reciprocally mounted, walking head (column 5, line 66 to column 6, line 21). It would have been obvious to one of ordinary skill in the art to incorporate the reciprocally mounted, walking head of Simelunas into the invention of FR 2195892A since both are directed methods of cutting dough and since the reciprocally mounted, walking head of Simelunas would eliminate the need for multiple cutters as used by FR 2195892A, thus eliminating the need to synchronize multiple cutters.

15. Claim 24 remains rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2195892 A as applied above, in view of EP 841009A2.

FR 2195892A teach the above mentioned concepts. FR 2195892A do not teach a perforator which alternately depresses and cuts the dough. EP 841009A2 teach a method of cutting dough by alternately depressing and cutting the dough (column 5, lines 41-47). It would have been obvious to one of ordinary skill in the art to incorporate the alternate depressing and cutting of EP 841009A2 into the invention of FR 2195892A since both are directed to methods of cutting dough, since FR 2195892A uses rotary cutters, and since EP 841009A2 teach that this type of cutting produces a rustic and home-made appearance to the dough, which is appealing to the consumer (column 5, lines 38-41).

16. Claims 29-37 remain rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2195892A as applied above, in view of Funabashi et al [Pat. No. 4,608,918].



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FR 2195892A teach the above mentioned concepts. FR 2195892A do not teach an outer cutting edge and inner blunt edge, particular shapes, and a movable head. Funabashi et al teach a cutting device using a head (Figure 4, 1) with an inner blunt portion (Figure 4, 3) and an outer cutting edge (Figure 4, 2). It would have been obvious to one of ordinary skill in the art to incorporate the head of Funabashi et al into the invention of FR 2195892A since both are directed to methods of cutting dough and since Funabashi et al teach the cutting and sealing of the two dough surfaces can be accomplished in a single pressing step (column 1, lines 54-58). It would have been obvious to one of ordinary skill in the art to vary the shapes of Funabashi et al since baked goods have been produced in a multitude of different shapes and sizes and since differing types of shapes and designs imprinted on a baked good add to consumer appeal as evidenced by EP 841009A2 (column 5, lines 38-41).

17. Claims 38 and 43 remain rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2195892A and Makowecki as applied above, in view of EP 841009A2.

FR 2195892A and Makowecki teach the above mentioned concepts. FR 2195892A and Makowecki do not teach imprinting a pattern. EP 841009A2 teach imprinting a pattern in dough (Figure 3). It would have been obvious to one of ordinary skill in the art to impress patterns as taught by EP 841009A2 in the invention of FR 2195892A since both are directed to methods of cutting dough and since EP 841009A2 teach the increased consumer appeal produced (column 5, lines 38-41).

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18. Claims 39-40, 45, and 47 remain rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2195892A and Simelunas as applied above, in view of EP 841009A2.

FR 2195892A and Simelunas teach the above mentioned concepts. FR 2195892A and Simelunas do not teach imprinting a pattern. EP 841009A2 teach imprinting a pattern in dough (Figure 3). It would have been obvious to one of ordinary skill in the art to impress patterns as taught by EP 841009A2 in the invention of FR 2195892A since both are directed to methods of cutting dough and since EP 841009A2 teach the increased consumer appeal produced (column 5, lines 38-41).

#### ***Response to Arguments***

19. Applicant's arguments filed January 4, 2001 have been fully considered but they are not persuasive.

Applicants argue that none of the references teach a convex implement or forming a convex product. Applicants' attention is drawn to Figures 2 & 5 of Makowecki which illustrate a convex dough (32) as well as a convex cutter (Figure 5, 39 and 41); Figure 3 of FR 2195892A; and Figure 2, #17 of D'Orlando. Regarding claims 41 and 52, it would have been obvious to one of ordinary skill in the art that the invention of FR 2195892A would also produce convex shapes since this effect is dependent upon the physical properties of the material which is cut such as the elasticity, density, and viscosity of the dough to name just a few. Regarding claims 1 and 59, the

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shape of the cut material would be a preferred method of using the claimed device, dependent upon the material to be cut (as previously discussed), and as such is not given weight.

Applicants argue that Funabashi does not teach cutting dough. Although Funabashi teach cutting bread rather than dough, claims 29-37 are apparatus claims and the cutting device of Funabashi would still be relevant to the cutting device of FR 2195892A.

### ***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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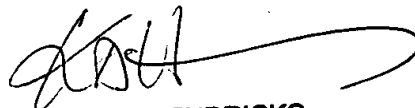
21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner can normally be reached on Monday-Thursday from 7:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703)-308-3959. The fax number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Drew Becker

February 8, 2001

  
KEITH HENDRICKS  
PRIMARY EXAMINER